

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. S1-4:06CR775 RWS
	)	
KENNETH M. PETTIS,	)	
	)	
Defendant.	)	

**ORDER**

This matter is before me on the pretrial motions filed by defendant Kenneth M. Pettis. Pursuant to 28 U.S.C. § 636(b), the motion was referred to United States Magistrate Judge Audrey G. Fleissig.

Judge Fleissig had an evidentiary hearing on January 23, 2007.

On February 12, 2007, Judge Fleissig issued a Report and Recommendation that Pettis' motion to suppress be denied. Kenneth Pettis filed his written objections to Judge Fleissig's Report and Recommendation on February 23, 2007.

I have conducted a *de novo* review of the evidentiary hearing and the legal memoranda filed by the parties. After careful consideration, I adopt the thorough reasoning of Magistrate Judge Fleissig denying the defendant's motion to suppress.

Specifically based on my review of the record, including a review of the photographs themselves, the identification procedures used in this case by the investigating officer were not unduly suggestive. Even if the procedures could be construed as unduly suggestive, applying the facts in Neil v. Biggers, 409 U.S. 188, (1972). I find that the reliability of the identifications outweighs any undue suggestion.

Accordingly,

**IT IS HEREBY ORDERED** that the objection to Judge Fleissig's Report and Recommendation filed by Kenneth Pettis is denied.

**IT IS FURTHER ORDERED** that based on my *de novo* review of the record, the Report and Recommendation of the Magistrate Judge [#36] is **SUSTAINED, ADOPTED, and INCORPORATED** herein.

**IT IS FINALLY ORDERED** that defendant's motion to suppress identification testimony [#28] is denied.

  
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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 9th day of March, 2007.